

DEPARTMENT OF HEALTH AND HUMAN SERVICES
PUBLIC HEALTH SERVICE
HEALTH SERVICES ADMINISTRATION
INDIAN HEALTH SERVICE
ROCKVILLE, MARYLAND

INDIAN HEALTH SERVICE CIRCULAR ND. 82-6

AVAILABILITY OF FISCAL YEAR 1981 AND 1982 FUN&

sec.

1. Purpose
2. Background
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1. **PURPOSE.** The purpose of this Circular is to explain the provisions in the Fiscal Year (FY) 1981 and 1982 Indian Health Service (IHS) appropriation acts, P.L. 96-514 and P.L. 97-100, which govern IHS obligation authority and the availability of such funds to IHS grantees and contractors. This Circular will also deal with the treatment of unexpended funds, including "savings", and the reprogramming of funds provided to grantees and contractors. This Circular replaces IHS Circular No. 81-3. Circular 81-3 is still applicable to FY 1980 funds unless modified herein.

2. **BACKGROUND.**

A. **Availability.** In passing P.L. 96-514 and P.L. 97-100 Congress dealt with three legal issues that impact on when IHS can obligate appropriated funds and when IHS contractors and grantees could use funds provided to them through IHS contracts and grants. Two of these issues derive from provisions in the Indian Self-Determination Act, P.L. 93-638, and one results from a Comptroller General opinion generally referred to as the Norton Sound decision.

(1) Section 8, P.L. 93-638 reads:

The provisions of any other laws to the contrary notwithstanding, any funds appropriated pursuant to the Act of November 2, 1921 (42 Stat. 208), [Snyder Act] for any fiscal year which are not obligated and expended prior to the beginning of the fiscal year succeeding the fiscal year for which such funds were appropriated shall remain available for obligation and expenditure during such succeeding fiscal year.

This would have allowed IHS two years in which to obligate funds appropriated under authority of the Snyder Act.

(2) Section 106(h), P.L. 93-638 reads in part:

any savings in operation under such contracts shall be utilized to provide additional services or benefits under the contract.

This provision only deals with contracts and what should be done with "savings" not when the "savings" must be used.

(3) The Norton Sound Decision.

The decision held that the basic rule on availability of appropriations is that, unless otherwise provided by law, appropriations made for a specific fiscal year lapse at the end of that year and may not be obligated for expenditure in the succeeding fiscal year. Section 8 of P.L. 93-638 would have provided an exception except that subsequent appropriation acts have contained a provision that states:

No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein (emphasis added).

In the FY 1981 appropriations act (P.L. 96-5141, Congress included 2 provisions aimed at modifying the application of the Norton Sound decision and the Appropriation Act's own prohibition against future year obligations:

funds made available to tribes and tribal organizations through grants and contracts authorized by the Indian Self determination and Education Assistance Act of 1975 . . . shall remain available until September 30, 1982;

and

Funds provided in this Act [P.L. 96-514], . . . for the Indian Health Service, may be used for one-year contracts and grants which are to be performed in two fiscal years, so long as the total obligation is recorded in the year for which the funds are appropriated.

The FY 1982 appropriations act (P.L. 97-100) included the following language:

funds made available to tribes and tribal organizations through grants and contracts authorized the Indian Self-Determination and Education Assistance Act of 1975 . . . shall remain available until September 30, 1983.

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Funds provided in this Act [P.L. 97-1001] may be used for one-year contracts and grants which are to be performed in two fiscal years, so long as the total obligation is recorded in the year for which the funds are appropriated:

Provided further, that funding contained herein, and in any earlier appropriations Act, for scholarship programs under section 103 of the Indian Health Care Improvement Act and section 757 [338G] of Public Health Service Act shall remain available for expenditure until September 30, 1983.

- B. **Reprogramming.** The House and Senate Appropriation Committees have **established procedures** which the IHS must follow whenever IHS wishes to reprogram funds between budget activities or subactivities identified in Reports by either Congressional Appropriations Committee. A copy of the Reprogramming Procedures from House Report No. 95-1251, pages 120 and 122, is at Attachment A.

Neither the Reprogramming Procedures nor this Circular applies to the transfer of funds between budget categories of approved grants or contracts unless a transfer would result in a shift of funds between Congressionally identified budget activities or subactivities. For example, a transfer of funds within a grant or contract from Contract Care to Preventive Health is a reprogramming since both Contract Care and Preventive Health are Congressionally identified budget activities or subactivities. On the other hand, a transfer of funds from travel to supplies within a grant or contract for public health nursing or within a public health nursing component of a grant or contract is not a reprogramming since the transferred funds still remain within the same Congressionally identified budget activity, i.e., Public Health Nursing.

3. POLICY.

- A. Funds may only be obligated in the fiscal year for which they were appropriated.
- 8. FY 1981 funds made available to tribes and tribal organizations by P.L. 93-638 grants and contracts including "savings" under Section 106(h)) may be expended to liquidate obligations which were incurred by the contractor through September 30, 1982, i.e., the end of FY 1982.
- c. FY 1982 funds made available to tribes and tribal organizations by P.L. 93-638 grants and contracts (including "savings" under Section 106(h)) may be expended to liquidate obligations which were incurred by the contractor through September 30, 1983, i.e., the end of FY 1983.
- D. In all non-P.L. 93-638 cases, FY 1981 and FY 1982 funds may be used by a contractor or grantee in two fiscal years as long as they are

obligated by the IRS in the year in which they are appropriated. The contract or grant by which these funds are made available shall not be for longer than one year though reasonable "no costs" extensions may--be made where the contractor was unable to complete the agreed upon task during the original term.

Caution:, You should not obligate more funds in these contracts or . than may reasonably be expected to be needed in the original term (which is not to exceed 12 months) of the contract or grant. "No cost" extensions are not available for services.. Therefore, "old" money should be used before "new" money.

- E "Savings" ^t available in contracts under B and C above may only be used to provide "additional services or benefits under the contract". Use of these "savings" are governed by all policies and clearance requirements applicable to other federal funds, e.g., these funds may not be used for facilities construction or remodeling unless the 1 contract itself was for such a purpose and/or normal and necessary clearances and reprogramming authority has been obtained.

Caution: (1) It should be assured that any additional services or benefits purchased with "savings" do not establish ongoing programs which cannot be maintained with funds available for future contracts, i.e., these funds are not to be used to expand the base services of the contract so as to create recurring costs, unless these funds represent savings which are reasonably expected to become a permanent part of the program's financial base.

(2) Section 106(h) savings in a P.L. 93-638 contract are not to be used to reduce the contract amount available in the fiscal year for which they were initially available or in any succeeding fiscal year for which they remain available.

(3) Not all unexpended funds will be the result of "savings", i. e., a reduction in expenditures resulting from improved management, higher productivity, or more effective services. Unexpended funds may also result from an initial incorrect cost estimate or from a delayed implementation of the contract. (i) Unexpended funds resulting from an incorrect cost estimate may be treated as "savings" though the estimated cost for the succeeding fiscal year should be revised to correct the error. (ii) Unexpended funds resulting from delayed implementation are not savings, would not necessarily require revised cost estimates for the succeeding fiscal year, but would remain available to the contractor as provided under 6 and C above..


- F. Unexpended funds in a P.L. 93-638 contract may be carried over to a subsequent or alternate P.L. 93-638 contract with the same contractor - as long as the funds are not expended beyond the applicable date provided in B or C above and subject to the limitation on savings in E above and on reprogramming in 2 B above.

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- .. G. Unexpended funds in P.L. 93-638 grants discussed in B and C above may be used only for purposes spelled out in the grant award.

Caution : You should not obligate more funds in these grants than may reasonably be expected to be needed in the initial grant period or utilize the unexpended funds to expand the base services beyond that which can reasonably be expected to be supported in the future.

- H. Reprogramming procedures established by the House and Senate Appropriations Committees are applicable to all IHS funds provided to IHS contractors and grantees under any authority, e.g., P.L. 93-638, Buy Indian, etc. Authority to reprogram funds has not been delegated to the Area/Program Office level. Prior written approval must be obtained from IHS Headquarters for any reprogramming including reprogramming proposed by a contractor or grantee.
- I. Funds appropriated by P.L. 97-100 and any previous appropriations act for Indian Health Scholarships under section 338G of the Public Health Service Act or Health Professions Preparatory Scholarships under section 103 of P.L. 94-437 are available for expenditure until September 30, 1983.


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Attachment A

REPROGRAMMING PROCEDURES

The House Committee on Appropriations for many years has had an informal agreement with the various agencies and bureaus funded in the Department of the Interior and Related Agencies appropriation bill with respect to guidelines and procedures for reprogramming funds by deferring approved projects and utilizing funds appropriated for these projects to accomplish others.

It has come to the attention of the Committee that the practice of requesting approval for reprogramming or notifying the Committee about reprogramming actions is not uniformly understood by the 29 various agencies funded in this bill.

The Committee is well aware of the need of the administering agencies to reprogram funds to carry out an effective program. Changing conditions because of various factors may result in variations of cost estimates. However to maintain integrity in the appropriations process the Committee must be kept fully apprised of all proposed reprogrammings of projects and programs within each activity undertaken by the agency involved.

It is with this thought in mind that the House and Senate Committees established the following criteria for all reprogramming:

1. *Definition.*—"Reprogramming", as defined in these procedures, includes the reallocation of funds from one budget activity to another. In cases where either Committee report displays an allocation of an appropriation below the activity level, that finer level of detail shall be the basis for reprogramming. For construction accounts, a reprogramming constitutes the reallocation of funds from one construction project identified in the justifications to another. A reprogramming shall also consist of any other significant departure from the program described in the agency's budget justifications.

2. *Criteria for reprogramming.*—

a. Any project or activity which may be deferred through reprogramming shall not later be accomplished by means of further reprogramming; but, instead, funds should again be sought for the deferred project or activity through regular appropriation processes.

b. A reprogramming should be made only when an unforeseen situation arises; and then only if postponement of the project or the activity until the next appropriation year would result in actual loss or damage. Mere convenience or desire should not be factors for consideration.

c. Reprogramming should not be employed to initiate new programs or to change allocations specifically denied, limited or increased by the Congress in the Act or the report. In cases where unforeseen events or conditions are deemed to require such changes, proposals shall be submitted in advance to the Committee, regardless of amounts involved, and be fully explained and justified.

3. *Reporting and approval procedures.*—

a. Any proposed reprogramming must be submitted to the Committee in writing prior to implementation if it exceeds \$250,000 annually or results in an increase or decrease of more than 10% annually in affected programs.

b. All reprogrammings shall be reported to the Committee quarterly and shall include cumulative totals.

c. Any significant shifts of funding among object classifications should also be reported to the Committees in a timely manner.

d. Reprogramming proposals submitted to the Committee for prior approval shall be considered approved after 30 calendar days if the Committee has posed no objection. However, agencies will be expected to extend the approval deadline if specifically requested by either Committee.